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26304 7590 07/08/2009 KATTEN MUCHIN ROSENMAN LLP 575 MADISON AVENUE NEW YORK, NY 10022-2585			EXAMINER HALL, ARTHUR O	
			ART UNIT 3714	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/072,296	Applicant(s) CHUUMA ET AL.	
	Examiner ARTHUR O. HALL	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 59-96 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 59-96 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Examiner acknowledges applicants' cancellation of claims 1-58 and addition of claims 59-96 in the Response dated 2/10/2009 directed to the Non-final Office Action dated 10/6/2008. Claims 59-96 are pending in the application and subject to examination as part of this office action.

Examiner acknowledges that applicants' arguments in the Response dated 2/3/2009 directed to the rejection set forth under 35 U.S.C. 103(a) in the Non-final Office Action dated 10/6/2008 are deemed moot in light of a new ground of rejection under 35 U.S.C. 103(a) as set forth below in view of applicants' amendments and in view of applicants' arguments.

Examiner acknowledges that objection of claim 4 in the Non-final Office Action dated 10/6/2008 is rendered moot in lieu of applicants' cancellation of claims 1-58.

Examiner acknowledges that objection of claims 1-58 under 35 USC 112, sixth paragraph in the Non-final Office Action dated 10/6/2008 is rendered moot in lieu of applicants' cancellation of claims 1-58.

Examiner acknowledges that rejection of claims 1-58 under 35 USC 101 in the Non-final Office Action dated 10/6/2008 is rendered moot in lieu of applicants' cancellation of claims 1-58.

Examiner acknowledges that objection of claims 1-58 under 35 USC 112, first paragraph in the Non-final Office Action dated 10/6/2008 is rendered moot in lieu of applicants' cancellation of claims 1-58.

Examiner acknowledges that objection of claims 1-58 under 35 USC 112, second paragraph in the Non-final Office Action dated 10/6/2008 is rendered moot in lieu of applicants' cancellation of claims 1-58.

Examiner sets forth new grounds of rejection of claims 59-95 under 35 U.S.C. 112, second paragraph as being interpreted under 35 USC 112, sixth paragraph as not recited in means and/or step plus function form

Examiner sets forth new grounds of rejection of claims 59-70 under 35 U.S.C. 101 as being non-statutory subject matter.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 59-95 rejected under 35 U.S.C. 112, second paragraph as being interpreted under 35 U.S.C. 112, sixth paragraph as not recited in either means or step plus function form because the means or step plus function language set forth in the claims does not satisfy the 3-prong test set forth by the Court of Appeals for the Federal Circuit (CAFC). The 3-prong test provides a determination of the manner in which the scope of a "means or step plus function" limitation is to be interpreted during examination, which is to read on only the structures or materials disclosed in the specification and "equivalents thereof" that correspond to the recited function (See MPEP 2181 (I), (II); see also *In re Donaldson Co.*, 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994)).

The CAFC decided in accordance with *In re Donaldson Co.* that a claim limitation is presumed to invoke 35 U.S.C. 112, sixth paragraph, if the claim meets the following 3-prong test:

- (A) the claim limitations must use the phrase "means for" or "step for;"
- (B) the "means for" or "step for" must be modified by functional language; and
- (C) the phrase "means for" or "step for" must not be modified by sufficient structure, material, or acts for achieving the specified function.

The claim limitation "musical piece management means for reading" and "a step of causing a computer to function as musical piece management means for reading" uses the phrase "means for" or "step for," however, the "means for" or "step for" is

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preceded by or followed by so as to be modified by a recited structural feature in the claim. It is unclear whether the preceding or following or modifying feature causes the claimed “means for” or “step for” to be in an improper form that would preclude application of 35 U.S.C. 112, sixth paragraph, because one having ordinary skill in the art would not understand whether the term is in “means for” or “step for” form.

If applicant wishes to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to amend the claim so that the phrase “means for” or “step for” is clearly recited in proper form.

If applicant does **not** wish to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to amend the claim so that it will clearly not be a means (or step) plus function limitation (e.g., deleting the phrase means for” or “step for”).

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 59-70 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims recite an information processing program that is merely a computer-readable medium because the step for reading information and the step for arranging and displaying the same number of mark objects as beats recited in the body of the

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claims is software to be stored thereon. Thus, reciting an information processing program does not affirmatively nor clearly recite the tangible computer-readable medium necessary for the computer software or program to be stored thereon. Consequently, the computer-readable medium must be affirmatively recited so as to realize the computer program's functionality.

The recitation of computer software only represents functional descriptive material per se, which here is a judicial exception that falls within the purview of an abstract idea. An abstract idea is presented here since the subject matter of the claims becomes a compilation of data within a computer because it is not stored on a computer-readable medium. Hence, no practical application is provided since no physical computer-readable medium is recited from which the processor can execute the software code thereon in order to physically transform an object to a different state or thing and provide a useful, concrete and tangible result to the player.

Consequently, claims 59-70 are directed to nonstatutory functional descriptive material per se and is not given patentable weight (See MPEP 2106.01 Computer-Related Nonstatutory Subject Matter; see also *Diamond v. Diehr*, 209 USPQ 1, 8 (1981)).

Allowable Subject Matter

Claims 64, 66-70, 76, 78-82, 88, 90-94 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 103

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Examiner sets forth new grounds of rejection under 35 U.S.C. § 103(a) with respect to new features as described below because each of the features of applicants' claimed invention as newly added continues to be unpatentable or obvious over the prior art.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 59, 71, 83, 95 and 96 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyamoto et al. (US Patent 6,464,585; hereinafter Miyamoto).

Features are described by figures with reference characters where necessary for clarity.

Regarding claims 83 and 96, Miyamoto teaches
an information processing apparatus (column 7, lines 37-47, Miyamoto)
comprises:

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musical piece management means / processor for reading information for generating musical tones and information as to at least a rhythm and a tempo that are set in relation to the information for generating musical tones, from a recording medium having recorded therein the information for generating musical tones and the information as to the at least a rhythm and tempo, and reproducing a musical piece while managing at least the rhythm and tempo (column 8, lines 7-50, column 9, lines 3-20 and Fig. 1, Fig. 3, 11, 20-21 and 26 and Fig. 4, 40 Miyamoto; the CPU of the video game system reads data including frequency or tempo that corresponds to tone and depth value of vibrato sound or rhythm from a data holding/storage part and reproduces or converts the data into an audio signal that represents the frequency and depth value of vibrato for sound created as music input by a player via a controller); and

mark/moving object display processing means / processor for, when the musical piece management means / processor reproduces the musical piece, arranging and displaying the same number of mark objects as beats corresponding to the information as to the rhythm of the musical piece reproduced and managed by the musical piece management means / processor, the mark objects each having a shape corresponding to the number of the beats and being related to a sequence of the beats, on a screen of display means / display (column 20, lines 41-67, column 21, lines 46-61, Fig. 3, 11, Fig. 4, 40 and Figs. 13-18, Miyamoto; the CPU of the video gaming system registers or arranges and displays on a display the equivalent number of musical note symbols or mark objects as there are beats of a score that correspond to the frequency of tone and depth value of vibrato sound that generates the music input by the player, wherein the note symbols are shaped as a down pointing triangle, left pointing triangle etc. so as to represent the equivalent sound inputted, registered and displayed on the score),

further displaying on the screen of the display means / display a moving object so that the moving object travels between the mark objects on the screen periodically at a constant speed according to the sequence of the beats (column 9, lines 21-52, column 22, lines 19-31 and Figs. 13-18, Miyamoto; a player object or moving object is displayed on the display as moving to any of the displayed first to third places in which musical note symbols are located in a period corresponding to the average rate of speed or

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velocity of the beats that correspond to the frequency of tone and depth value of vibrato sound that generates the music resulting from the melody input by the player), and

also controlling the display of the moving object and the mark objects by setting a special distance between the mark objects so that a cycle that the moving object travels over all the mark objects at the constant speed matches a measure of the tempo of the musical piece reproduced and managed by the musical piece management means / processor (column 10, lines 10-34, column 23, lines 26-44, column 24, lines 26-41, column 25, lines 8-57 and Figs. 13-18, Miyamoto; the player or moving object traverses between the musical note symbols based on the coordinate position of the musical note symbols relative to one another such that it would have been obvious at the time of invention to try an implementation in which the predetermined cycle of the moving object to any of the displayed first to third places of location of musical note symbols occurring at an average rate of speed or velocity of the beats are equivalent to or match the frequency of tone and depth value of vibrato sound that generates the music input by the player as described below).

Miyamoto teaches that music data read at a predetermined cycle is useful for the particular purpose of processing audio sound upon detection of the position of a player object (column 23, lines 26-44 and column 24, lines 26-41, Miyamoto). A person having ordinary skill in the art in light of Miyamoto would also have recognized the desirability of improved generation of the frequency of tone and depth value of vibrato sound that generates the music. Miyamoto also teaches that display of a player or moving object with respect to other musical note symbols or still objects in first to third places is one of a finite number of possible ways known to be useful for displaying a player object relative musical note symbols based on selection so as to generate music visually (column 24, lines 26-41 and column 25, lines 8-26, Miyamoto). Moreover, Miyamoto

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teaches player or moving object moving relative to musical note symbols that would reasonably have been expected to be applicable to player object and enemy object battle processing (column 25, lines 8-26, Miyamoto). Miyamoto also discloses to one having ordinary skill in the art that combining the predetermined cycle of the player object to move between the locations of musical note symbols at an average rate of speed of the beats does not affect the operation of matching the frequency of tone and depth value of vibrato sound since the player can now merely visually see the generation of the music they input (column 25, lines 8-57, Miyamoto).

Thus, it would have been obvious to one having ordinary skill in the art at the time the applicant's invention was made to try the predetermined cycle of the moving object to any of the displayed first to third places of location of musical note symbols occurring at an average rate of speed or velocity of the beats as taught by Miyamoto to match or make equivalent the frequency of tone and depth value of vibrato sound in an attempt to provide an improved display of the generation of the music input by the player since a person having ordinary skill has good reason to pursue the known options within his or her technical grasp. As a result, because controlling the display of a moving object between mark objects located at a special distance so that the cycle of the moving object matches the tempo of a musical piece as claimed has the functionality predicted by the prior art, it would have been obvious to make the predetermined cycle of the player object moving to any of the first to third places of location of musical note symbols positioned at coordinates relative to one another

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match the frequency of tone and depth value of vibrato sound in order to generate a visual picture of the music input by the player.

Regarding claims 59 and 71, the scope of the claims for the article of manufacture implemented to execute the method of operating the system is inherent with respect to claims 83 and 96 above in view of the structure disclosed by Miyamoto since the article of manufacture is the computer readable medium (column 10, lines 2-10, Miyamoto) from which the method steps are executed in the normal and logical manner by which the system is employed.

Regarding claim 95, the scope of the claim for the method of operating the system is inherent with respect to claims 83 and 96 above in view of the structure disclosed by Miyamoto since the method is the normal and logical manner by which the system is employed.

Claims 60-62, 72-74 and 84-86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyamoto in view of Suzuki et al. (US Patent 6,227,968; hereinafter Suzuki). Features are described by figures with reference characters where necessary for clarity.

Miyamoto teaches features of the claimed invention as described above.

However, Miyamoto does not appear to teach an operation signal management means and determination means as claimed. Therefore, attention is directed to Suzuki, which teaches

Regarding claim 84, there is disclosed

operation signal management means for managing an operation signal output from operational input means, the operation signal corresponding to an operational input made by a user (column 3, line 51 to column 4, line 5, column 4, lines 13-30, column 7, lines 24-50 and Figs. 1-2, 41 and 42, Suzuki; a player inputs specification of music to be displayed via a joystick and decision button or operation signal management means);

determination means for determining whether timing that the moving object moving on the screen overlaps with the mark object is coincident with timing that the operation signal is output from the operational input means to the operation signal management means in response to an operation to the operational input means made by a user; and determination mark object display processing means for displaying a determination mark object corresponding to a determination result of the determination means as to whether a coincidence of the timing is obtained, on the mark object associated with the determination result (column 8, lines 40-62 and Fig. 1, 100, Suzuki; a control section or determination means and determination mark object display processing means determines or indicates whether the scrolled mark or moving object overlaps the still marks or mark objects at a certain timing based on input by the player and displays a color or determination mark object if the overlap occurs at the particular timing).

Suzuki suggests that a device that simulates rhythm sensations in time to music and generates rhythm sensations by performing stepping in accordance with contents instructed in sequence will improve the degree of achievement of rendition effect of a

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gaming machine with respect to the speed a player operates an input device without error based on visually instructed contents in time according to game progress of a musical piece (column 1, lines 15-51, Suzuki).

Thus, it would have been obvious to a person having ordinary skill in the art at the time the applicant's invention was made to modify Miyamoto in view of the teachings of Suzuki for the purpose of providing the gaming device of Miyamoto having a player object that moves to any of the locations of musical note symbols that are upgradeable to and/or integrable with the determination of the timing at which a scrolled mark overlaps still marks so as to display a color indicative of the timing as disclosed by Suzuki in order to improve the degree of achievement of rendition effect of a gaming machine with respect to the speed a player operates an input device without error based on visually instructed contents in time according to game progress of a musical piece by simulating rhythm sensations in time to music and generates rhythm sensations by performing stepping in accordance with contents instructed in sequence.

Regarding claim 85, there is disclosed

operation signal management means for managing an operation signal output from operational input means, the operational input means having a plurality of buttons and outputting the operation signal corresponding to an operational input to the buttons made by a user (column 3, line 51 to column 4, line 5, column 4, lines 13-30, column 7, lines 24-50 and Figs. 1-2, 41 and 42, Suzuki; a player inputs specification of music to be displayed via a joystick and decision button or operation signal management means);

determination means for determining whether timing that the moving object moving on the screen overlaps with the mark object is coincident with timing that the operation signal is output from the operational input means to the operation signal

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management means when a user operates a predetermined button that is set in advance out of the plurality of buttons, and determination mark object display processing means for displaying a determination mark object corresponding to a determination result of the determination means as to whether a coincidence of the timing is obtained, on the mark object associated with the determination result (column 8, lines 40-62 and Fig. 1, 100, Suzuki; a control section or determination means and determination mark object display processing means determines or indicates whether the scrolled mark or moving object overlaps the still marks or mark objects at a certain timing based on input by the player and displays a color or determination mark object if the overlap occurs at the particular timing);

symbol display processing means for displaying a predetermined symbol indicating the predetermined button on the mark object associated with the determination result of the determination means as to whether a coincidence of the timing is obtained, before the moving object moving on the screen overlaps with the mark object associated with the determination result (column 8, line 62 to column 9, line 8, column 15, lines 16-29 and Fig. 1, 100, Suzuki; a control section or symbol display processing means displays a dance image or predetermined symbol that indicates the button input by the player for still marks guided by stepping operation timing when the scrolled mark overlaps the still marks); and

mode switching means for switching, according to a predetermined set mode, between a display mode in which the symbol display processing means displays the predetermined symbol on the mark object and a non-display mode in which the symbol display processing means does not displays the predetermined symbol on the mark object (column 9, lines 8-34, column 15, lines 16-29 and Fig. 1, 100, Suzuki; ; a control section or mode switching means switches between a mode in which the dance image is displayed indicating the still marks as appearing as stepping position indication marks of stepping timing and a mode in which the dance image is not displayed indicating the still marks as not appearing as stepping position indication marks of stepping timing).

Regarding claim 86, there is disclosed

earliness/lateness determination means for determining whether the timing that the operation signal is output from the operational input means is earlier or later than the timing that the moving object overlaps with the mark object on the screen, when the determination means determines that the timing that the moving object overlaps with the mark object on the screen is not coincident with the timing that the operation signal is output from the operational input means (column 10, lines 35-52 and Fig. 1, 100, Suzuki; a control section or earliness/lateness determination means determines the time deviation of actual stepping time with respect to the time the scrolled mark overlaps the still marks so as to determine if the player input is prior to or after the time of overlap when the overlap does not occur at the particular timing); and

earliness/lateness object display processing means for displaying an earliness/lateness object in proximity to the mark object associated with the determination result of the determination means as to whether a coincidence of the timing is obtained and at a position on the screen corresponding to earliness/lateness determined by the earliness/lateness determination means, when the determination means determines that the timing that the moving object overlaps with the mark object on the screen is not coincident with the timing that the operation signal is output from the operational input means (column 10, line 65 to column 11, line 6 and Fig. 1, 100, Suzuki; a control section or earliness/lateness object display processing mean determines points or an earliness/lateness object based on the time deviation, and it would have been obvious at the time of invention to try an implementation in which the points are displayed near the still marks since one having ordinary skill in the art would have understood that the player would need to visually view the score where the time deviation event occurred).

Regarding claims 60-62 or 72-74, the scope of the claims for the article of manufacture implemented to execute the method of operating the system is inherent with respect to claims 84-86, respectively, above in view of the structure disclosed by Suzuki and Okabe since the article of manufacture is the computer readable medium

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(column 7, lines 11-15, Suzuki) from which the method steps are executed in the normal and logical manner by which the system is employed.

Claims 63, 65, 75, 77, 87 and 89 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyamoto in view of Suzuki, and further in view of Okabe et al. (US Patent 6,572,475; hereinafter Okabe). Features are described by figures with reference characters where necessary for clarity.

Miyamoto alone or in combination with Suzuki teaches features of the claimed invention as described above.

However, Miyamoto alone or in combination with Suzuki does not appear to teach a notification means as claimed. Therefore, attention is directed to Okabe, which teaches

Regarding claim 87, there is disclosed notification means for generating notification information corresponding to the determination result of the determination means as to whether a coincidence of the timing is obtained for each measure of the musical piece that is reproduced and managed by the musical piece management means, displaying the generated notification information on the screen of the display means, and outputting sound of the generated notification information from sound output means (column 8, line 41 to column 9, line 4 and Fig. 1, 10, Okabe; a CPU generates priority information that corresponds to the timing at which the plural objects overlap one another, displays the priority information and outputs sound via an audio parameter in accordance with the priority information).

Okabe suggests that a device that synchronizes the display of pictures with the production of sound will remove the difficulty of writing a program that considers the time required for sound and picture processing and that also takes into account the different CPU processing capabilities of different computer systems (column 1, line 16 to column 2, line 8, Okabe).

Thus, it would have been obvious to a person having ordinary skill in the art at the time the applicant's invention was made to modify Miyamoto in view of the teachings of Suzuki, and further in view of the teachings of Okabe for the purpose of upgrading and/or integrating a player object that moves to any of the locations of musical note symbols having the determination of the timing at which a scrolled mark/player object overlaps still marks/musical note symbols so as to display a color indicative of the overlap timing as disclosed by Miyamoto alone or in combination with Suzuki with the priority information indicating overlap timing as disclosed by Oakbe in order to remove the difficulty of writing a program that considers the time required for sound and picture processing and that also takes into account the different CPU processing capabilities of different computer systems by synchronizing synchronizes the display of pictures with the production of sound.

Regarding claim 89, there is disclosed
parameter control means for controlling modification of at least one of a parameter for setting the size of the mark object displayed on the screen by the mark/moving object display processing means and a parameter for setting a display color or brightness of the mark object displayed on the screen by the mark/moving object display processing means, depending on the level of playing volume that is

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preset for the predetermined beat of the musical piece reproduced and managed by the musical piece management means (column 10, line 52 to column 11, line 11 and Fig. 1, 10, Okabe; a CPU or parameter control means controls changing an entire volume and depth parameter of the size of plural objects that move or remain fixed and a tone color and musical interval parameter that sets the color or luminance of the plural objects based on the volume and tone of music generated from input by the player); and

mode switching means for switching, according to a preset mode, between a mode in which the parameter control means modifies the parameters and a mode in which the parameter control means does not modify the parameters (column 9, line 50 to column 10, line 3 and Fig. 1, 10, Okabe; a CPU or mode switching means switches between changing and not changing the size and the color or luminance of the plural objects based on sound determined from volume and tone).

Regarding claims 63 and 65 or 75 and 77, the scope of the claims for the article of manufacture implemented to execute the method of operating the system is inherent with respect to claims 87 and 89, respectively, above in view of the structure disclosed by Suzuki and Okabe since the article of manufacture is the computer readable medium (column 7, lines 11-15, Suzuki) from which the method steps are executed in the normal and logical manner by which the system is employed.

Response to Arguments

Applicants' arguments filed in the Response dated 2/10/2009 directed to the Examiners' rejection under 35 U.S.C. § 103(a) have been considered fully and are moot in light of a new ground of rejection under 35 U.S.C. 103(a) as set forth above in view of applicants' amendments and in view of applicants' arguments thereof.

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Examiner has provided the above new grounds of rejection of the claims under 35 U.S.C. 103(a) because each of the features of applicants' claimed invention continues to be unpatentable or obvious over the prior art.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

D US-5,862,229, Shimizu

E US-6,991,542 B2, Asami et al.

F US-6,225,547 B1, Toyama et al.

G US-6,379,244 B1, Sagawa et al.

H US-6,347,998 B1, Yoshitomi et al.

I US-6,294,720 B1, Aoki

J US-6,607,446 B1, Shimomura et al.

K US-6,529,191 B1, Ryo

L US-6,538,190 B1, Yamada et al.

M US-7,027,600 B1, Kaji et al.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ARTHUR O. HALL whose telephone number is (571)270-1814. The examiner can normally be reached on Mon - Fri, 8:00am - 5:00 pm, Alt Fri, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Dmitry Suhol/
Supervisory Patent Examiner, Art
Unit 3714

/A. O. H./
Examiner, Art Unit 3714